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MEMORANDUM

Arizona Corporation Commission

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Director
Utilities Division

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AZ CORP COMMISSION
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DATE: December 22, 2011

RE: IN THE MATTER OF THE APPLICATION OF HYPERCUBE TELECOM, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LOCAL EXCHANGE AND LONG DISTANCE, FACILITIES-BASED LOCAL EXCHANGE AND LONG DISTANCE TELECOMMUNICATIONS SERVICES. (DOCKET NO. T-20805A-11-0221)

Attached is the Staff Report for the above referenced application. The Applicant is applying for approval to provide the following services:

- Resold Long Distance Services
- Facilities-Based Long Distance Services
- Resold Local Exchange Services
- Facilities-Based Local Exchange Services

Staff is recommending approval of the application with conditions.

SMO:AFF:red

Originator: Armando Fimbres

Attachment: Original and Thirteen Copies

SERVICE LIST FOR: HYPERCUBE TELECOM, LLC
DOCKET NO. T-20805A-11-0221

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

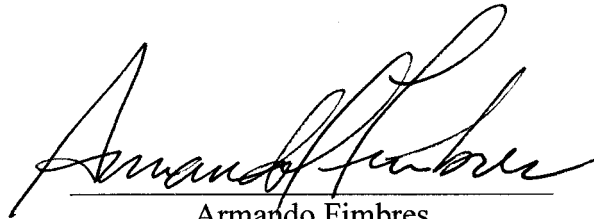
HYPERCUBE TELECOM, LLC
DOCKET NO. T-20805A-11-0221

IN THE MATTER OF THE APPLICATION OF HYPERCUBE TELECOM, LLC FOR
APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE
RESOLD LOCAL EXCHANGE AND LONG DISTANCE, FACILITIES-BASED LOCAL
EXCHANGE AND LONG DISTANCE TELECOMMUNICATIONS SERVICES

DECEMBER 22, 2011

STAFF ACKNOWLEDGMENT

The Staff Report for Hypercube Telecom, LLC, Docket No. T-20805A-11-0221, was the responsibility of the Staff member listed below. Armando Fimbres was responsible for the review and analysis of the application for a Certificate of Convenience and Necessity to provide resold long distance, facilities-based long distance, resold local exchange; facilities-based local exchange services and petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in cursive script, appearing to read "Armando Fimbres", is written over a horizontal line.

Armando Fimbres
Public Utility Analyst V

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1. INTRODUCTION

On May 31, 2011, Hypercube Telecom, LLC ("Hypercube" or "Applicant" or "Company") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, facilities-based long distance, resold local exchange, and facilities-based local exchange services on a statewide basis in Arizona. The Applicant petitioned the Arizona Corporation Commission ("ACC" or "Commission") for a determination that its proposed services should be classified as competitive.

On June 17, 2011, Hypercube submitted confidential financial statements to Staff. On October 25, 2011, Hypercube responded to Staff's First Set of Data Request issued on July 8, 2011. During the month of November, the Applicant and Staff clarified remaining information issues through emails and direct discussions. Revisions to its proposed tariffs were docketed by Hypercube on December 1, 2011.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive, if the Applicant's initial rates are just and reasonable.

2. REQUESTED SERVICES

Hypercube's CC&N application requested statewide authority to provide resold long distance, facilities-based long distance, resold local exchange, and facilities-based local exchange services telecommunications services. The tariffs submitted by Hypercube include terms and conditions for service to business end-users and interexchange carriers.

3. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

Hypercube is a subsidiary of Hypercube, LLC, a privately held company founded in 2005 and headquartered near Dallas, Texas. The corporate offices for both entities are located at 3200 W. Pleasant Run Road, Lancaster, Texas 75416.¹ Hypercube, LLC is a limited liability company formed under the laws of the state of Delaware for the purpose of acquiring KMC Data LLC ("KMC Data").² The ultimate parent of KMC Data, when acquired by Hypercube, LLC, was KMC Holdings. In 2008, KMC Data changed its name to Hypercube Telecom, LLC.

KMC Data was granted a CC&N to provide telecommunications services in Arizona by the Commission on August 23, 2002 in Decision No. 65125, Docket No. T-04014A-01-0340. On October 30, 2007 in Decision No. 69967, Docket No. T-04014A-01-0340, the Commission revoked KMC Data's CC&N for non-compliance with Decision No. 65125. From direct discussions and email communications with Hypercube, Staff understands that the KMC Data management responsible for compliance with Decision No. 65125 has been completely replaced

¹ <http://www.h3net.com/about-us>

² Federal Communications Commission ("FCC") WC Docket No. 06-020, DA- 06-239, DA-06-527

by the current Hypercube management team. Staff understands that Hypercube is committed to full compliance with future Commission decisions.

Hypercube has authority to provide local exchange services in Colorado, Connecticut, District of Columbia, Indiana, Michigan, Missouri, New Hampshire, New Mexico, New York, Vermont, Virginia, Washington and Wisconsin. Hypercube has authority to provide interexchange services in Alabama, Arkansas, California, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, West Virginia and Wyoming.

Hypercube's response to Staff's First Set of Data Request indicates its top executives have over 80 total years of telecommunications experience.³ Combined with its existing telecommunications authority many jurisdictions, Staff believes that Hypercube possesses the technical capabilities to provide the services for which it is requesting authority in Arizona.

4. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

In section (B-3) of the CC&N application, Hypercube stated that it would rely on the financial resources of its parent, Hypercube, LLC. Pursuant to a protective agreement, Hypercube submitted unaudited financials for the periods ending December 31, 2009 and December 31, 2010. For the period ending December 31, 2010, Hypercube, LLC reported Total Assets of \$20,980,812; Members Equity of \$8,536,821; and Net Income of \$17,050,421.

The Applicant lists conditions under which advance payments may be required for services in its proposed Tariff No. 1, Section 2.5. Staff believes that advances, deposits, and/or prepayments received from the Applicant's customers should be protected by the procurement of either a performance bond or an Irrevocable Sight Draft Letter of Credit ("ISDLC"). The Applicant should be granted the discretion to procure either the performance bond or the ISDLC. Since the Applicant is requesting a CC&N for more than one kind of service, the amount of a performance bond or the ISDLC for multiple services is an aggregate of the minimum bond or the ISDLC amount for each type of telecommunications service requested by the Applicant. The Commission's current performance bond or ISDLC requirements are \$10,000 for resold long distance (for those resellers who collect deposits, advances or prepayments), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance and \$100,000 for facilities-based local exchange services. Based on the services the Applicant is requesting authority to provide, the minimum recommended performance bond or ISDLC would be \$235,000. The performance bond or ISDLC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the deposits is within 10 percent of the total minimum performance bond or ISDLC amount. Further, measures should

³ Ronald R. Beaumont, President and CEO, over 30 years of telecommunications experience; G. Clay Meyers, Chief Financial Officer, over 25 years of telecommunications experience; Doug Davis, Chief Technology Officer, over 25 years of telecommunications experience.

be taken to ensure that the Applicant does not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

Staff recommends that the Applicant procure a performance bond or the ISDLC equal to \$235,000. The minimum performance bond or the ISDLC amount of \$235,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or the ISDLC amount should be increased in increments of \$117,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$23,500 of the performance bond or the ISDLC amount. If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or the ISDLC.

Staff further recommends that proof of the above mentioned performance bond or an ISDLC be docketed within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes first. Staff also recommends that the Company notify Staff through a compliance filing when it begins serving customers. The original bond or ISDLC should be filed with the Commission's Business Office and copies of the bond or ISDLC with Docket Control, as a compliance item in this docket. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the bond or ISDLC on behalf of, and for the sole benefit of the Applicant's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its Certificate. The Commission may use the bond or ISDLC funds, as appropriate, to protect the Applicant's customer and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Applicant's customers.

5. ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an actual rate and a maximum rate may be listed for each competitive service offered. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. In section (B-4) of its application, the Company provided a net book value or fair value rate base at the end of its first 12 months of operation estimated to be zero (\$0). Hypercube also provided a revenue projection of \$661,000 for the same 12 month period.

Hypercube submitted Access Services Tariff No. 1, Interexchange Services Tariff No. 2, and Local Exchange Services Tariff No. 3 to support its application. Following detailed discussions with Staff, Hypercube filed revised tariffs on December 5, 2011. Staff has reviewed these rates and believes they are comparable to the rates charged by CLECs, ILECs and major long distance carriers operating in the State of Arizona. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value rate base information provided should not be given substantial weight in this analysis.

6. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of Local Exchange service are discussed below.

6.1 Number Portability

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a CLEC's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

6.2 Provision Of Basic Telephone Service And Universal Service

In response to Staff's First Set of Data Request, Hypercube confirmed its intentions to provide services directly to local exchange users.

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

6.3 Quality Of Service

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (f/k/a USWC) in Docket No. T-

01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

6.4 Access To Alternative Local Exchange Service Providers

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

6.5 911 Service

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

6.6 Custom Local Area Signaling Services

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

7. REVIEW OF COMPLAINT INFORMATION

Staff found no evidence of complaints filed at the FCC against Hypercube or its parent. In section (A-11) of its CC&N application, Hypercube states "Like most providers in the industry, the Applicant is from time to time involved in billing disputes. At present, the Applicant filed a complaint against Level 3 Communications (Level 3) in New York, and is addressing a similar matter with Level 3 in California. The matters involve a dispute regarding

the billing for services that the Applicant provides to Level 3. To date, the Applicant's complaints remain unresolved; however, the Applicant believes that material progress is being made with Level 3 and the issues will be resolved amicably in the future."

In response to Staff's First Set of Data Request, Hypercube clarified that complaint proceedings involving itself or Hypercube, LLC against Level 3 Communications, LLC ("Level 3") remain in progress in New York and California.⁴ Complaint proceedings in Alabama and Tennessee versus DeltaCom, Inc. ("DeltaCom") have been settled and the dockets closed.⁵ A complaint proceeding versus Level 3 in Texas has been withdrawn and the docket closed.⁶ Other complaint proceedings in Florida, Georgia, and California between Hypercube or Hypercube, LLC and DeltaCom and Level 3 have been settled and the dockets closed.⁷

Although Hypercube's response to section (A-12) in its CC&N application stated "None of the Applicant's officers directors, partners or managers have been involved in any civil or criminal investigation or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years", Staff found one civil action which was not identified. In response to Staff's inquiry, Hypercube responded "Civil Action No. 3:08-CV-2298-G, US District Court Northern District of Texas Dallas Division, Hypercube, LLC vs. ComTel Telecom Assets LP was not identified because it did not appear to the respondent to be responsive to the question. It was not a civil or criminal investigation, there was no judgment entered or levied by an administrative or regulatory agency, nor did it result in a criminal conviction." In addition, Hypercube explained that a settlement had been reached with ComTel Telecom Assets, LP and the case was withdrawn. No judgment was made in Civil Action No. 3:08-CV-2298-G.

Hypercube's role in complaints and civil actions do not involve end-users and pertain to three telecommunications companies. Nonetheless, Staff believes it prudent to recommend that Hypercube for the next three (3) years annually advise Staff of its status in complaint proceedings or civil actions.

8. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

⁴ New York, Docket No. 09-C-0784; California, Docket No. C.10-02-027

⁵ Alabama, Docket No. 31176; Tennessee, Docket No. 09-00077

⁶ Texas, Docket No. 37599

⁷ Florida, Docket No. 090327; Georgia, Docket No. 29917-U; California, Docket No. 09-05009

8.1 Competitive Services Analysis For Local Exchange Services

8.1.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.

The local exchange market that the Applicant seeks to enter is one in which a number of CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

8.1.2 The number of alternative providers of the service.

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

8.1.3 The estimated market share held by each alternative provider of the service.

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Since the CLECs and local exchange resellers have only recently been authorized to offer service they have limited market share.

8.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the Applicant, as defined in A.A.C. R14-2-801.

None over which the Commission has jurisdiction.

8.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

8.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and which provide them with a virtual monopoly over local exchange service. New entrants are also beginning to enter this market.
- b. One in which new entrants will be dependent upon ILECs:
 - 1. To terminate traffic to customers.
 - 2. To provide essential local exchange service elements until the entrant's own network has been built.
 - 3. For interconnection.
- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.
- d. One in which most customers have few, if any choices since there is generally only one provider of local exchange service in each service territory.
- e. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

8.2 Competitive Services Analysis For Interexchange Services

8.2.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.

The interexchange market that the Applicant seeks to enter is one in which numerous facilities-based and resold interexchange carriers have been authorized to provide service throughout the State. The Applicant will be a new entrant in this market and, as such, will have to compete with those companies in order to obtain customers.

8.2.2 The number of alternative providers of the service.

There are a large number of facilities-based and resold interexchange carriers providing both interLATA and intraLATA interexchange service throughout the

State. In addition, various ILECs provide intraLATA interexchange service in many areas of the State.

8.2.3 The estimated market share held by each alternative provider of the service.

The large facilities-based interexchange carriers (AT&T, Sprint, MCI, etc.) hold a majority of the interLATA interexchange market, and the ILECs provide a large portion of the intraLATA interexchange market. Numerous other interexchange carriers have a smaller part of the market and one in which new entrants do not have a long history with any customers.

8.2.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

None.

8.2.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

Both facilities-based and resold interexchange carriers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the ILECs offer similar intraLATA toll services.

8.2.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

9. RECOMMENDATIONS

The following sections contain the Staff recommendations on the application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

9.1 Recommendations on the Application for a CC&N

Staff recommends that Applicant's application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted as discussed herein. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. The Company provided a net book value or fair value rate base at the end of its first 12 months of operation estimated to be zero (\$0). Hypercube also provided a revenue projection of \$661,000 for its first twelve (12) months of operation. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other providers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated; and
9. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void, after due process.

1. The Applicant shall docket a conforming tariff for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first;
2. The Applicant shall:
 - a. Procure a performance bond or an ISDLC equal to \$235,000. The minimum bond or draft amount of \$235,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond or draft amount should be increased in increments of \$117,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$23,500 of the bond amount or ISDLC amount; and
 - b. File the original performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a decision in this matter or 10 days before service to end-user customers is commenced, whichever comes first. The original performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers;
 - c. Staff also recommends that the Company notify the Commission through a compliance filing within 30 days of the commencement of service to end-user customers; and
3. The Applicant shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Fund. The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204 (B).

Furthermore, Staff recommends that approval of the Application be conditioned on the following:

1. That Hypercube's application be approved based upon its representation to the Commission that Hypercube will be providing local exchange service directly to end-users in Arizona. Should Hypercube not provide service directly to end-user customers, it shall notify the Commission and file for cancellation its CC&N.
2. That Hypercube file a Complaint and Civil Action status report for each of the three years following a decision by the Commission granting CC&N approval. The Complaint and Civil Action status report should be filed in Docket Control by April 15 for each of the preceding three years and should summarize complaint and civil action information for all jurisdictions in which Hypercube operates.

9.2 Recommendation on the Applicant's Petition To Have Its Proposed Services Classified As Competitive

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.